

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1369**

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**Introduced by Assembly Member Davis**

February 27, 2009

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An act to amend ~~Section 422.91~~ Sections 1203.017 and 4532 of the Penal Code, relating to ~~hate crimes~~ home detention.

LEGISLATIVE COUNSEL'S DIGEST

AB 1369, as amended, Davis. ~~Hate crimes.~~ *Involuntary home detention.*

*Existing law provides that the county board of supervisors of any county may, upon determination by the correctional administrator that conditions in a jail facility warrant the necessity of releasing sentenced misdemeanor inmates prior to them serving the full amount of a given sentence due to lack of jail space, offer a program under which specified inmates may be required to participate in an involuntary home detention program.*

*This bill would remove the requirement that the inmates subject to the involuntary home detention program be misdemeanor inmates.*

*Existing law provides specified punishments for the escape or attempted escape from various confinements, including the place of confinement pursuant to a voluntary home detention program.*

*This bill would include the escape or attempted escape from the place of confinement pursuant to an involuntary home detention program among the escapes or attempted escapes subject to these provisions. By changing the definition and scope of an existing crime, this bill would impose a state-mandated local program.*

*Existing law provides that except in unusual cases where the interests of justice would best be served if a person is granted probation, probation shall not be granted to any person who is convicted of a felony offense in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility.*

*This bill would include persons participating in a voluntary or involuntary home detention program among those subject to this provision.*

*Existing law provides that the willful failure of a prisoner, including a prisoner participating in a voluntary home detention program, whether convicted of a felony or a misdemeanor, to return to his or her place of confinement no later than the expiration of the period that he or she was authorized to be away from that place of confinement, is an escape from that place of confinement.*

*This bill would include prisoners participating in an involuntary home detention program among those prisoners subject to this provision.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law requires the Department of Corrections and Rehabilitation to, subject to available funding, cooperate with fully and participate actively with federal, state, and local law enforcement agencies and community hate crime prevention and response networks and other antihate groups concerning hate crimes and gangs, and strive to provide inmates with safe environments in which they are not pressured to join gangs or hate groups and do not feel a need to join them in self-defense.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1203.017 of the Penal Code is amended  
2     to read:

1 1203.017. (a) Notwithstanding any other provision of law,  
2 upon determination by the correctional administrator that  
3 conditions in a jail facility warrant the necessity of releasing  
4 sentenced ~~misdemeanor~~ inmates prior to them serving the full  
5 amount of a given sentence due to lack of jail space, the board of  
6 supervisors of any county may authorize the correctional  
7 administrator to offer a program under which inmates committed  
8 to a county jail or other county correctional facility or granted  
9 probation, or inmates participating in a work furlough program,  
10 may be required to participate in an involuntary home detention  
11 program, which shall include electronic monitoring, during their  
12 sentence in lieu of confinement in the county jail or other county  
13 correctional facility or program under the auspices of the probation  
14 officer. Under this program, one day of participation shall be in  
15 lieu of one day of incarceration. Participants in the program shall  
16 receive any sentence reduction credits that they would have  
17 received had they served their sentences in a county correctional  
18 facility.

19 (b) The board of supervisors may prescribe reasonable rules  
20 and regulations under which an involuntary home detention  
21 program may operate. The inmate shall be informed in writing that  
22 he or she shall comply with the rules and regulations of the  
23 program, including, but not limited to, the following rules:

24 (1) The participant shall remain within the interior premises of  
25 his or her residence during the hours designated by the correctional  
26 administrator.

27 (2) The participant shall admit any peace officer designated by  
28 the correctional administrator into his or her residence at any time  
29 for purposes of verifying the participant's compliance with the  
30 conditions of his or her detention.

31 (3) The use of electronic monitoring may include global  
32 positioning system devices or other supervising devices for the  
33 purpose of helping to verify his or her compliance with the rules  
34 and regulations of the home detention program. The devices shall  
35 not be used to eavesdrop or record any conversation, except a  
36 conversation between the participant and the person supervising  
37 the participant which is to be used solely for the purposes of voice  
38 identification.

39 (4) The correctional administrator in charge of the county  
40 correctional facility from which the participant was released may,

1 without further order of the court, immediately retake the person  
2 into custody to serve the balance of his or her sentence if the  
3 electronic monitoring or supervising devices are unable for any  
4 reason to properly perform their function at the designated place  
5 of home detention, if the person fails to remain within the place  
6 of home detention as stipulated in the agreement, or if the person  
7 for any other reason no longer meets the established criteria under  
8 this section.

9 (c) Whenever the peace officer supervising a participant has  
10 reasonable cause to believe that the participant is not complying  
11 with the rules or conditions of the program, or that the electronic  
12 monitoring devices are unable to function properly in the  
13 designated place of confinement, the peace officer may, under  
14 general or specific authorization of the correctional administrator,  
15 and without a warrant of arrest, retake the person into custody to  
16 complete the remainder of the original sentence.

17 (d) Nothing in this section shall be construed to require the  
18 correctional administrator to allow a person to participate in this  
19 program if it appears from the record that the person has not  
20 satisfactorily complied with reasonable rules and regulations while  
21 in custody. A person shall be eligible for participation in a home  
22 detention program only if the correctional administrator concludes  
23 that the person meets the criteria for release established under this  
24 section and that the person's participation is consistent with any  
25 reasonable rules and regulations prescribed by the board of  
26 supervisors or the administrative policy of the correctional  
27 administrator.

28 (1) The rules and regulations and administrative policy of the  
29 program shall be written and reviewed on an annual basis by the  
30 county board of supervisors and the correctional administrator.  
31 The rules and regulations shall be given to or made available to  
32 any participant upon request.

33 (2) The correctional administrator, or his or her designee, shall  
34 have the sole discretionary authority to permit program  
35 participation as an alternative to physical custody. All persons  
36 referred or recommended by the court to participate in the home  
37 detention program pursuant to subdivision (e) who are denied  
38 participation or all persons removed from program participation  
39 shall be notified in writing of the specific reasons for the denial  
40 or removal. The notice of denial or removal shall include the

1 participant's appeal rights, as established by program administrative  
2 policy.

3 (e) The court may recommend or refer a person to the  
4 correctional administrator for consideration for placement in the  
5 home detention program. The recommendation or referral of the  
6 court shall be given great weight in the determination of acceptance  
7 or denial. At the time of sentencing or at any time that the court  
8 deems it necessary, the court may restrict or deny the defendant's  
9 participation in a home detention program.

10 (f) The correctional administrator may permit home detention  
11 program participants to seek and retain employment in the  
12 community, attend psychological counseling sessions or  
13 educational or vocational training classes, or seek medical and  
14 dental assistance. Willful failure of the program participant to  
15 return to the place of home detention not later than the expiration  
16 of any period of time during which he or she is authorized to be  
17 away from the place of home detention pursuant to this section  
18 and unauthorized departures from the place of home detention are  
19 punishable as provided in Section 4532.

20 (g) As used in this section, "correctional administrator" means  
21 the sheriff, probation officer, or director of the county department  
22 of corrections.

23 (h) (1) Notwithstanding any other law, the correctional  
24 administrator shall provide the information specified in paragraph  
25 (2) regarding persons on involuntary home detention to the  
26 Corrections Standards Authority, and upon request, shall provide  
27 that information to the law enforcement agency of a city or  
28 unincorporated area where an office is located to which persons  
29 on involuntary home detention report.

30 (2) The information required by paragraph (1) shall consist of  
31 the following:

32 (A) The participant's name, address, and date of birth.

33 (B) The offense committed by the participant.

34 (C) The period of time the participant will be placed on home  
35 detention.

36 (D) Whether the participant successfully completed the  
37 prescribed period of home detention or was returned to a county  
38 correctional facility, and if the person was returned to a county  
39 correctional facility, the reason for that return.

40 (E) The gender and ethnicity of the participant.

1 (3) Any information received by a police department pursuant  
2 to this subdivision shall be used only for the purpose of monitoring  
3 the impact of home detention programs on the community.

4 (i) It is the intent of the Legislature that home detention  
5 programs established under this section maintain the highest public  
6 confidence, credibility, and public safety. In the furtherance of  
7 these standards, the following shall apply:

8 (1) The correctional administrator, with the approval of the  
9 board of supervisors, may administer a home detention program  
10 pursuant to written contracts with appropriate public or private  
11 agencies or entities to provide specified program services. No  
12 public or private agency or entity may operate a home detention  
13 program in any county without a written contract with that county's  
14 correctional administrator. However, this does not apply to the use  
15 of electronic monitoring by the Department of Corrections and  
16 Rehabilitation as established in Section 3004. No public or private  
17 agency or entity entering into a contract may itself employ any  
18 person who is in the home detention program.

19 (2) Program acceptance shall not circumvent the normal booking  
20 process for sentenced offenders. All home detention program  
21 participants shall be supervised.

22 (3) (A) All privately operated home detention programs shall  
23 be under the jurisdiction of, and subject to the terms and conditions  
24 of the contract entered into with, the correctional administrator.

25 (B) Each contract shall include, but not be limited to, all of the  
26 following:

27 (i) A provision whereby the private agency or entity agrees to  
28 operate in compliance with any available standards promulgated  
29 by state correctional agencies and bodies, including the Corrections  
30 Standards Authority, and all statutory provisions and mandates,  
31 state and county, as appropriate and applicable to the operation of  
32 home detention programs and the supervision of sentenced  
33 offenders in a home detention program.

34 (ii) A provision that clearly defines areas of respective  
35 responsibility and liability of the county and the private agency or  
36 entity.

37 (iii) A provision that requires the private agency or entity to  
38 demonstrate evidence of financial responsibility, submitted and  
39 approved by the board of supervisors, in amounts and under  
40 conditions sufficient to fully indemnify the county for reasonably

1 foreseeable public liability, including legal defense costs, that may  
2 arise from, or be proximately caused by, acts or omissions of the  
3 contractor. The contract shall provide for annual review by the  
4 correctional administrator to ensure compliance with requirements  
5 set by the board of supervisors and for adjustment of the financial  
6 responsibility requirements if warranted by caseload changes or  
7 other factors.

8 (iv) A provision that requires the private agency or entity to  
9 provide evidence of financial responsibility, such as certificates  
10 of insurance or copies of insurance policies, prior to commencing  
11 any operations pursuant to the contract or at any time requested  
12 by the board of supervisors or correctional administrator.

13 (v) A provision that permits the correctional administrator to  
14 immediately terminate the contract with a private agency or entity  
15 at any time that the contractor fails to demonstrate evidence of  
16 financial responsibility.

17 (C) All privately operated home detention programs shall  
18 comply with all appropriate, applicable ordinances and regulations  
19 specified in subdivision (a) of Section 1208.

20 (D) The board of supervisors, the correctional administrator,  
21 and the designee of the correctional administrator shall comply  
22 with Section 1090 of the Government Code in the consideration,  
23 making, and execution of contracts pursuant to this section.

24 (E) The failure of the private agency or entity to comply with  
25 statutory provisions and requirements or with the standards  
26 established by the contract and with the correctional administrator  
27 may be sufficient cause to terminate the contract.

28 (F) Upon the discovery that a private agency or entity with  
29 whom there is a contract is not in compliance pursuant to this  
30 paragraph, the correctional administrator shall give 60 days' notice  
31 to the director of the private agency or entity that the contract may  
32 be canceled if the specified deficiencies are not corrected.

33 (G) Shorter notice may be given or the contract may be canceled  
34 without notice whenever a serious threat to public safety is present  
35 because the private agency or entity has failed to comply with this  
36 section.

37 (j) Inmates participating in this program shall not be charged  
38 fees or costs for the program.

1 (k) For purposes of this section, “evidence of financial  
2 responsibility” may include, but is not limited to, certified copies  
3 of any of the following:

4 (1) A current liability insurance policy.

5 (2) A current errors and omissions insurance policy.

6 (3) A surety bond.

7 *SEC. 2. Section 4532 of the Penal Code is amended to read:*

8 4532. (a) (1) Every prisoner arrested and booked for, charged  
9 with, or convicted of a misdemeanor, and every person committed  
10 under the terms of Section 5654, 5656, or 5677 of the Welfare and  
11 Institutions Code as an inebriate, who is confined in any county  
12 or city jail, prison, industrial farm, or industrial road camp, is  
13 engaged on any county road or other county work, is in the lawful  
14 custody of any officer or person, is employed or continuing in his  
15 or her regular educational program or authorized to secure  
16 employment or education away from the place of confinement,  
17 pursuant to the Cobey Work Furlough Law (Section 1208), is  
18 authorized for temporary release for family emergencies or for  
19 purposes preparatory to his or her return to the community pursuant  
20 to Section 4018.6, or is a participant in a home detention program  
21 pursuant to Section 1203.016 or *Section 1203.017*, and who  
22 thereafter escapes or attempts to escape from the county or city  
23 jail, prison, industrial farm, or industrial road camp or from the  
24 custody of the officer or person in charge of him or her while  
25 engaged in or going to or returning from the county work or from  
26 the custody of any officer or person in whose lawful custody he  
27 or she is, or from the place of confinement in a home detention  
28 program pursuant to Section 1203.016 or *Section 1203.017*, is  
29 guilty of a felony and, if the escape or attempt to escape was not  
30 by force or violence, is punishable by imprisonment in the state  
31 prison for a determinate term of one year and one day, or in a  
32 county jail not exceeding one year.

33 (2) If the escape or attempt to escape described in paragraph  
34 (1) is committed by force or violence, the person is guilty of a  
35 felony, punishable by imprisonment in the state prison for two,  
36 four, or six years to be served consecutively, or in a county jail  
37 not exceeding one year. When the second term of imprisonment  
38 is to be served in a county jail, it shall commence from the time  
39 the prisoner otherwise would have been discharged from jail.

1 (3) A conviction of a violation of this subdivision, or a violation  
2 of subdivision (b) involving a participant of a home detention  
3 program pursuant to Section 1203.016 *or* Section 1203.017, that  
4 is not committed by force or violence, shall not be charged as a  
5 prior felony conviction in any subsequent prosecution for a public  
6 offense.

7 (b) (1) Every prisoner arrested and booked for, charged with,  
8 or convicted of a felony, and every person committed by order of  
9 the juvenile court, who is confined in any county or city jail, prison,  
10 industrial farm, or industrial road camp, is engaged on any county  
11 road or other county work, is in the lawful custody of any officer  
12 or person, or is confined pursuant to Section 4011.9, is a participant  
13 in a home detention program pursuant to Section 1203.016 *or*  
14 Section 1203.017, who escapes or attempts to escape from a county  
15 or city jail, prison, industrial farm, or industrial road camp or from  
16 the custody of the officer or person in charge of him or her while  
17 engaged in or going to or returning from the county work or from  
18 the custody of any officer or person in whose lawful custody he  
19 or she is, or from confinement pursuant to Section 4011.9, or from  
20 the place of confinement in a home detention program pursuant  
21 to Section 1203.016 *or* Section 1203.017, is guilty of a felony and,  
22 if the escape or attempt to escape was not by force or violence, is  
23 punishable by imprisonment in the state prison for 16 months, two  
24 years, or three years, to be served consecutively, or in a county  
25 jail not exceeding one year.

26 (2) If the escape or attempt to escape described in paragraph  
27 (1) is committed by force or violence, the person is guilty of a  
28 felony, punishable by imprisonment in the state prison for a full  
29 term of two, four, or six years to be served consecutively to any  
30 other term of imprisonment, commencing from the time the person  
31 otherwise would have been released from imprisonment and the  
32 term shall not be subject to reduction pursuant to subdivision (a)  
33 of Section 1170.1, or in a county jail for a consecutive term not to  
34 exceed one year, that term to commence from the time the prisoner  
35 otherwise would have been discharged from jail.

36 (c) (1) Except in unusual cases where the interests of justice  
37 would best be served if the person is granted probation, probation  
38 shall not be granted to any person who is convicted of a felony  
39 offense under this section in that he or she escaped or attempted  
40 to escape from a secure main jail facility, from a court building,

1 or while being transported between the court building and the jail  
2 facility *or is a participant in a home detention program pursuant*  
3 *to Section 1203.016 or Section 1203.017.*

4 (2) In any case in which a person is convicted of a violation of  
5 this section designated as a misdemeanor, he or she shall be  
6 confined in a county jail for not less than 90 days nor more than  
7 one year except in unusual cases where the interests of justice  
8 would best be served by the granting of probation.

9 (3) For the purposes of this subdivision, “main jail facility”  
10 means the facility used for the detention of persons pending  
11 arraignment, after arraignment, during trial, and upon sentence or  
12 commitment. The facility shall not include an industrial farm,  
13 industrial road camp, work furlough facility, or any other nonsecure  
14 facility used primarily for sentenced prisoners. As used in this  
15 subdivision, “secure” means that the facility contains an outer  
16 perimeter characterized by the use of physically restricting  
17 construction, hardware, and procedures designed to eliminate  
18 ingress and egress from the facility except through a closely  
19 supervised gate or doorway.

20 (4) If the court grants probation under this subdivision, it shall  
21 specify the reason or reasons for that order on the court record.

22 (5) Any sentence imposed under this subdivision shall be served  
23 consecutive to any other sentence in effect or pending.

24 (d) The willful failure of a prisoner, whether convicted of a  
25 felony or a misdemeanor, to return to his or her place of  
26 confinement no later than the expiration of the period that he or  
27 she was authorized to be away from that place of confinement, is  
28 an escape from that place of confinement. This subdivision applies  
29 to a prisoner who is employed or continuing in his or her regular  
30 educational program, authorized to secure employment or education  
31 pursuant to the Cobey Work Furlough Law (Section 1208),  
32 authorized for temporary release for family emergencies or for  
33 purposes preparatory to his or her return to the community pursuant  
34 to Section 4018.6, or permitted to participate in a home detention  
35 program pursuant to Section 1203.016 *or Section 1203.017.* A  
36 prisoner convicted of a misdemeanor who willfully fails to return  
37 to his or her place of confinement under this subdivision shall be  
38 punished as provided in paragraph (1) of subdivision (a). A prisoner  
39 convicted of a felony who willfully fails to return to his or her

1 place of confinement shall be punished as provided in paragraph  
2 (1) of subdivision (b).

3 *SEC. 3. No reimbursement is required by this act pursuant to*  
4 *Section 6 of Article XIII B of the California Constitution because*  
5 *the only costs that may be incurred by a local agency or school*  
6 *district will be incurred because this act creates a new crime or*  
7 *infraction, eliminates a crime or infraction, or changes the penalty*  
8 *for a crime or infraction, within the meaning of Section 17556 of*  
9 *the Government Code, or changes the definition of a crime within*  
10 *the meaning of Section 6 of Article XIII B of the California*  
11 *Constitution.*

12 ~~SECTION 1. Section 422.91 of the Penal Code is amended to~~  
13 ~~read:~~

14 ~~422.91. The Department of Corrections and Rehabilitation,~~  
15 ~~including the Division of Juvenile Facilities, subject to available~~  
16 ~~funding, shall do each of the following:~~

17 ~~(a) Cooperate fully and participate actively with federal, state,~~  
18 ~~and local law enforcement agencies and community hate crime~~  
19 ~~prevention and response networks and other anti-hate groups~~  
20 ~~concerning hate crimes and gangs.~~

21 ~~(b) Strive to provide inmates with safe environments in which~~  
22 ~~they are not pressured to join gangs or hate groups and do not feel~~  
23 ~~a need to join them in self-defense.~~